IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 105 OF 2003

Godfrey Lawrence
S/o Francisco Lawrence
R/o Flat No.F-3, Green Vally,
Valant, Porvorim, Goa. ... Applicant.

versus

STATE
(through PSI, Bicholim
Police Station),
Bicholim, Goa. ... Respondent.

Mr. N. Costa Frias, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 6TH JUNE, 2003.

ORAL JUDGMENT

With the consent of the learned Counsel appearing on behalf of the parties, this Criminal Miscellaneous Application is taken up for final disposal at the stage of Admission.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the Applicant who is the Original Accused No.1 in Criminal Case No.48/S/2001/C pending on the file of the Judicial Magistrate, First Class, Bicholim. The learned Trial

Court by its Order dated 23rd October, 2003, discharged one Erasto Viegas/Original Accused No.2 and ordered the framing of the charge for an offence punishable under Sections 447, 427, 352, 504 and 506(ii) of the Indian Penal Code against the present Applicant. It appears from the record that vide Exh.12, the charge against the present Applicant/Original Accused No.1 has been framed.

3. The Applicant being aggrieved by the aforesaid Order of the learned Trial Court filed Criminal Revision Application No.77 of 2002 before the Additional Sessions Judge at Panaji. The learned Additional Sessions Judge at Panaji, by Order dated 26th March, 2003, dismissed the revision. Hence, the present application under Section 482 of the Code of Criminal Procedure.

4. The learned Additional Sessions Judge at Panaji while dismissing the revision application filed by the present Applicant observed that the statement of one Ladu Malkar and one Bharat Shetkar implicated the present Applicant in the commission of the offence. The said two witnesses in their statement have named the present Applicant. In this background, therefore, the learned Additional Sessions Judge at Panaji, found that non holding of the test identification parade

would not entitle the Applicant/Original Accused No.1 to claim discharge. The learned Additional Sessions Judge at Panaji, therefore, dismissed the revision.

5. Mr. N. Costa Frias, learned Counsel appearing on behalf of the Applicant has urged before me that there is no prima facie material to justify the framing of the charge against the Applicant. According to him, though, the Applicant has been named in the complaint, the two witnesses referred to the Applicant by his first name. According to the learned Counsel appearing on behalf of the Applicant no test identification parade had been held to substantiate the identification of the Applicant.

6. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has submitted that the Applicant has been named in the complaint and both the witnesses have referred to the Applicant by his first name. According to the learned Public Prosecutor appearing on behalf of the State, these circumstances raised a suspicion against the Applicant and, therefore, the framing of the charge against the Applicant is justified.

7. I have perused the copies of the statement of the said witnesses namely Bharat Shetkar and Ladu

Malkar. Both the witnesses have referred to the Applicant by his first name. The fact of not holding the test identification parade and whether the said witnesses were knowing the Accused prior to the incident, is a matter which will have to be decided by the learned Trial Court after the evidence is recorded. Similarly, the effect of naming the Applicant only by his first name is again a matter to be appreciated by the learned Trial Court on appreciation of the evidence. At this stage, it is suffice to say that the Applicant has been named as an Accused by the said two witnesses and thus, there is prima facie material justifying the framing of the charge. It is needless to add that the learned Trial Court while appreciating the evidence would not be influenced by any of the observations made either by this Court or the learned Additional Sessions Judge at Panaji.

8. I, therefore, see no merit in the Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure filed by the Applicant and the same is dismissed.

P. V. HARDAS, J.

RD.